

The Case of Sexual Harassment in the Workplace

Noffke v. McClaskin Hot House [1989]

Teacher Resource

Curriculum Links: Understanding Canadian Law (CLU3E), Grade 11, Workplace Preparation

Legal Focus: Sexual harassment

Estimated Time: 1 period

Overall Expectations:

- Describe the role of law in the workplace.
- Communicate legal knowledge effectively.

Specific Expectations:

- Describe the protections afforded to workers by federal and provincial legislation, including those relating to injury and unemployment, and harassment and discrimination.
- Describe the steps that can be taken (e.g., mediation, grievance, formal complaint to labour boards or other provincial agencies or tribunals) and the remedies provided (e.g., employer sanctions, compensation) if employee rights are violated.
- Demonstrate an ability to listen and read critically, find relevant information, and express and support opinions, using proper legal terminology.

Description of the Case

Darlene Noffke was a grade 12 graduate who got a job working at a garden nursery through a government program. Her job was to help Mr. McClaskin, the owner, in taking care of the plants, placing orders, and assisting customers. Darlene enjoyed working with the plants and dealing with people on a daily basis. She worked very hard. In her first formal review, Mr. McClaskin wrote that she performed all her duties exceedingly well.

Over the next three months, Mr. McClaskin's behaviour towards Darlene began to change. When they were working he would often put his hands on her shoulder or hip and would lean over closer to her. When that happened, Darlene would quickly pull away from him. He then started to make casual comments about how he was sick of his wife and that he needed to get "satisfaction" from another woman. Darlene did not encourage these comments or actions, nor did she say anything against them.

She was becoming increasingly uncomfortable with the situation and she began avoiding the owner as much as possible. One day, he asked her for a kiss. She refused. He said “I know what’s wrong with you. You’re scared you’re going to like it.” A few days later, he suggested that she come over to his apartment and have sex with him. Again, she refused and told him that she had a serious boyfriend. This did not stop him and he tried several more times to get her to come to his apartment. She turned him down every time.

In June, Mr. McClaskin terminated her employment saying that he had no work for her, even though it was the busiest month of the year for the nursery.

Darlene made a complaint under the Ontario *Human Rights Code*.

The Final Judgment

The Board of Inquiry looked at a number of factors in reviewing this case.

1. Was the Ontario *Human Rights Code* violated?

Yes. Her boss repeatedly touched her, said he was sick of his wife and needed satisfaction from another woman and asked her to come to his place for sex. This constitutes sexual harassment.

2. Why didn’t Darlene say something when she first became uncomfortable with his behaviour?

She didn’t know what to do. She was scared and shy and didn’t want to lose her job.

3. Did Darlene need to say something to the owner for him to realize that he was violating the *Human Rights Code*?

No. The *Code* recognizes that people usually harass other people because they think they can get away with it. That is why the definition of harassment includes the words “... ought reasonably to be known....” Her withdrawal from his touching was enough to let him know that his actions were unwelcome.

4. What role did Darlene’s termination play in deciding if her rights were violated?

It appears that the owner violated the *Code* a second time by firing her after she rejected his sexual advances. This is called “reprisal.” Why else would he get rid of someone who was doing a good job at the busiest time of the year? It is a violation of the *Code* for a person in a position of authority to penalize or threaten an employee for not conceding to sexual harassment.

In its finding, the Board ordered the owner, Mr. McClaskin, to pay Darlene \$2,750 for mental anguish and \$240 for lost wages. It also ordered him to post a copy of the *Human Rights Code* at his business and, for the next two years, to inform the Commission any time he terminated a female employee.

Teaching & Learning Strategies

1. Ask students to complete *The Big Question*. Have a class discussion about what they think constitutes sexual harassment in the workplace. During this brainstorming session, put the answers on the board for students to refer to during the lesson.
2. Using a teacher- or student-centred reading strategy, review *The Facts of the Case*. Clarify any points and check for understanding. Ask students to identify any issues they think stand out as sexual harassment.
3. Discuss *The Issues* and *The Relevant Law* and be sure to explain how these laws apply to this particular case.
4. Ask students to complete the *You Be the Judge* exercise. Once they are finished, have them compare their answers with a partner. Ask 2-3 students to share their opinions with the class for each question.
5. Review *The Final Judgment*. Ask students if they agree or disagree with the final decision and how their answers from the previous exercise compared to those of the Board of Inquiry.
6. Have students complete the *Check for Understanding* exercise and take up answers in class.
7. Either in class or for homework, have students complete the *What's Your Opinion?* exercise. When students are finished, have a class discussion about the issue. This is a good time to bring up the importance of the work environment and the concept of 'poisoned work environment harassment'. Be sure to point out that while the majority of sexual harassment complaints are made against people in positions of authority, sexual harassment can also be committed by a person in the same position of power as the victim.
8. Optional: In groups of three, have one student mediate this dispute while two others play the roles of Darlene Noffke and Mr. McClaskin. Have students present arguments to a Board of Inquiry, while a team of two students play the lawyers for each side.

Assessment & Evaluation

- Class discussions
- *You Be the Judge* activity
- *Check for Understanding* worksheet
- *What's Your Opinion* activity
- Mock Mediation/Tribunal Hearings

Resources

Ontario Justice Education Network
www.ojen.ca

Ontario Human Rights Commission
www.ohrc.on.ca

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Student Handout

The Big Question

Should an employee be compensated for experiencing sexual harassment at work?

Check the box that best represents your feelings about this question.

- | | |
|--|--|
| <input type="checkbox"/> Yes, I strongly agree | <input type="checkbox"/> No, I disagree |
| <input type="checkbox"/> Yes, I agree | <input type="checkbox"/> No, I strongly disagree |

The Facts of the Case

Darlene Noffke was a grade 12 graduate who got a job working at a garden nursery through a government program. Her job was to help Mr. McClaskin, the owner, in taking care of the plants, placing orders, and assisting customers. Darlene enjoyed working with the plants and dealing with people on a daily basis. She worked very hard. In her first formal review, Mr. McClaskin wrote that she performed all her duties exceedingly well.

Over the next three months, Mr. McClaskin's behaviour towards Darlene began to change. When they were working he would often put his hands on her shoulder or hip and would lean over closer to her. When that happened, Darlene would quickly pull away from him. He then started to make casual comments about how he was sick of his wife and that he needed another woman. Darlene did not encourage these comments or actions, nor did she say anything against them.

She was becoming increasingly uncomfortable with the situation and she began avoiding the owner as much as possible. One day, he asked her for a kiss. She

refused. He said “I know what’s wrong with you. You’re scared you’re going to like it.” A few days later, he suggested that she come over to his apartment and have sex with him. Again, she refused and told him that she had a serious boyfriend. This did not stop him and he tried several more times to get her to come to his apartment. She turned him down every time.

In June, Mr. McClaskin terminated her employment saying that he had no work for her, even though it was the busiest month of the year for the nursery.

Darlene made a complaint under the Human Rights Code.

The Issues

- Did Darlene lose her job because she refused her boss’ sexual advances?
- Did her dismissal violate the Ontario *Human Rights Code*?

The Relevant Law

Ontario Human Rights Code

Sexual harassment

Harassment because of sex in workplaces

7. (2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

Sexual solicitation by a person in position to confer benefit, etc.

7. (3) Every person has a right to be free from,

- (a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- (b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

Reprisals

8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

You Be the Judge

The Board of Inquiry looked at a number of factors in reviewing this case. Pretend you are a member of the Board of Inquiry in Darlene’s case and you must determine the final outcome. Answer the questions below and then compare your answers with a partner.

1. Was the Ontario *Human Rights Code* violated? Why or why not?

2. Why do you think Darlene didn’t say something when she first became uncomfortable with Mr. McClaskin’s behaviour?

3. Did Darlene need to say something to Mr. McClaskin for him to realize that he was violating the *Human Rights Code*?

4. What role did Darlene’s termination play in deciding if her rights were violated?

5. Do you think Darlene should receive money from Mr. McClaskin as compensation for her dismissal? If yes, how much should she receive?

6. What do you think should happen to Mr. McClaskin?

The Final Judgment

Contrast your answers to the above questions with the decision of the Board of Inquiry.

The Board found that Mr. McClaskin had sexually harassed Darlene. She was scared, shy and afraid to lose her job and therefore didn't say anything at the beginning of the harassment. It didn't matter whether or not Darlene said anything to Mr. McClaskin. The Code recognizes that people usually harass other people because they think they can get away with it. That is why the definition of harassment includes the words "... ought reasonably to be known...." Her withdrawal from his touching was enough to let him know that his actions were unwelcome. Her firing, during the busy time of the year, was found to be a 'reprisal'. Why else would he get rid of someone who was doing a good job at the busiest time of the year? It is a violation of the *Code* for a person in a position of authority to penalize or threaten an employee for not complying with a sexual demand.

In its finding, the Board ordered the owner, Mr. McClaskin, to pay Darlene \$2,750 for mental anguish and \$240 for lost wages. It also ordered him to post a copy of the *Human Rights Code* at his business and, for the next two years, to inform the Commission any time he terminates a female employee.

Check for Understanding

1. What was the result of Darlene’s first formal review by her boss?

2. Describe two of Mr. McClaskin’s behaviours that constituted sexual harassment.

i. _____

ii. _____

3. Darlene was terminated during the low season because there was no work for her. **TRUE/FALSE**

4. In your own words, explain what “reprisal” means.

5. The Board of Inquiry found that Darlene’s body language was enough to communicate her feelings to her boss. **TRUE/FALSE**

6. Do you think that the award for “mental anguish” is fair? Explain.
